



POLICE DEPARTMENT CITY OF NEW YORK

May 10, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jorge Monge
Tax Registry No. 955212
52 Precinct
Disciplinary Case No. 2016-15603

Charge and Specification:

- I. Said Police Officer Jorge Monge, on or about November 24, 2015, at approximately 2240 hours, while assigned to PBBX and on duty, in the vicinity of East 149th Street and Marion Avenue and 52nd Precinct Stationhouse, Bronx County, wrongfully used force, in that he punched Michael Rodriguez about the face without police necessity.
P.G. 203-11 USE OF FORCE

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, NY 10038

Hearing Date:

February 7, 2017

Decision:

Respondent is found Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 7, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB Administrative Prosecutor called Michael Rodriguez as a witness and offered the out-of-court statement of Person A. Respondent testified on his own behalf and offered the out-of-court statement of former Police Officer Person B. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, Respondent is found Guilty.

FINDINGS AND ANALYSIS

The following facts are uncontested: On November 24, 2015, Respondent was on duty, in uniform, assigned to the 52 Precinct, performing Impact Patrol duties assigned to Special Post 1 in the vicinity of 194th Street, partnered with (now-retired) Police Officer Person B. At about 2240 hours they engaged in an interaction with Michael Rodriguez in the vicinity of East 194th Street and Marion Avenue, the Bronx, which resulted in Respondent and Person B placing handcuffs on Rodriguez. After backup arrived at the scene, Police Officer Brian Mahon was assigned as the arresting officer. In the details section of the arrest report that Mahon prepared (CCRB Ex. 5), he wrote that Respondent had informed him of the following facts: That he had stopped Rodriguez because he had an open bench warrant; that as he attempted to place Rodriguez under arrest, Rodriguez began slapping his hands away; that Rodriguez reached into his pocket and took out a sandwich bag containing about eight small zip lock bags of what appeared to be crack cocaine and swallowed the sandwich bag; and that Rodriguez resisted being arrested by pushing and punching Respondent and Person B.

Michael Rodriguez testified that on November 24, 2015, at about 2240 hours, he was walking with his friend Person A towards a store in the vicinity of East 149th Street and Marion Avenue, the Bronx. Rodriguez noticed Respondent walking behind him. He recognized Respondent because of encounters with him during 2014. When Rodriguez turned and looked at him, Respondent asked him, "What the fuck are you looking at?" Rodriguez asked Respondent why he was talking to him like that. Because Rodriguez believed that Respondent was using his cell phone to record what he and Person A were doing, Rodriguez pulled out his own phone and began to record Respondent. Respondent asked him, "What are you doing? Put your phone away." Rodriguez replied, "No. I don't have to put my phone away. You're recording me too." Respondent then said something to his partner and they both started "charging" towards Rodriguez. He stopped, but Person A ran away. Respondent asked him to produce ID, but Rodriguez did not have any New York State ID on him, only a Visa card with his name on it which he gave to him. Respondent started writing out a ticket. Respondent stated that he had jaywalked. Rodriguez told Respondent that he could not have jaywalked because there were no traffic signs on the street.

According to Rodriguez, Respondent then told him, "Step to the wall." Rodriguez asked Respondent, "For what? Aren't you giving me the ticket already?" Respondent replied, "No. I need to search your pockets." Rodriguez asked Respondent, "Why do you need to search me if you already got my ID?" Rodriguez stepped to the wall and Respondent frisked him by putting his hands into Rodriguez' pockets. Rodriguez asked him, "Why are you putting your hands in my pockets?" Respondent then "got mad" and began "yelling in my face, 'Don't move! Don't fucking move!'" Respondent then "pinned" him "to the wall." Rodriguez asked Respondent, "What is the problem? Why you so, like, angry?"

Rodriguez testified that he held his hands up with his open palms facing forward at about shoulder height while Respondent was searching his pockets. Respondent told him, "Stop moving, stop moving." Rodriguez told Respondent, "I'm not moving, officer." Respondent then "just punched me in my face" with his right hand in a "closed fist" causing the back of Rodriguez' head to "hit the wall." Rodriguez "blanked out after he hit me." He "felt like I was getting punched over and over again and then his partner put me in a headlock and he was choking me. He took me off my feet choking me, and he was repeatedly still hitting me in my stomach, my face."

Rodriguez heard sirens and when other police officers arrived Respondent's "partner let me go and they threw me on the floor." His hands were spread out on the ground and when Respondent told him to put his hands behind his back, even though he complied, Respondent "kicked me in my mouth." Respondent was yelling "Fuck, fuck." Rodriguez told the officers who lifted him off the ground that Respondent had "hit me for no reason. He punched me in my face." His face was bleeding because he had been punched on "my tooth and on my mouth." Rodriguez denied that he had possessed or used any controlled substances that day. He had no drugs on his person, only his Visa card and about \$30.00 in cash. Respondent never accused him of possessing crack cocaine and he did not swallow crack cocaine or anything else.

On cross-examination, Rodriguez was confronted with his criminal record (Resp. Ex. A). He acknowledged that during 2013 he sold crack cocaine; that he personally used marihuana; and that even after he had completed a nine-month inpatient treatment program in 2015, he went back to smoking marihuana. He denied that he had slapped Respondent's hands away when Respondent was frisking him and he denied that he had resisted being arrested and handcuffed by pushing and punching Respondent and Person B.

Respondent testified that he and Person B saw Rodriguez, who the Gang Unit had listed as being affiliated with the "Red House Gunners," and Person A commit jaywalking by walking diagonally across the street which caused a car to have to swerve to avoid hitting them. Since Respondent was aware that Rodriguez had an open warrant, Respondent decided to arrest him. When he stopped him, Person A ran away. When Respondent attempted to frisk Rodriguez, he slapped Respondent's hands away. When Respondent and Person B attempted to handcuff Rodriguez, he began pushing and punching Respondent and Person B. Respondent radioed an officer in distress call and requested that backup respond to the scene. Rodriguez took one sandwich bag containing what appeared to be crack cocaine out of his pocket, threw it into his mouth and swallowed the bag. Respondent testified that he had intended to take Rodriguez directly to the hospital himself. He told a supervisor that Rodriguez had swallowed a narcotic and needed to be removed to the hospital. At the precinct, when Respondent took off his gloves he saw that his right hand was swollen. He went to [REDACTED] Hospital. At the hospital, he complained that he had pain in his hand.

On cross-examination, Respondent testified that he wrote a ticket that Rodriguez had committed jaywalking. He agreed that neither he nor Person B had radioed for EMS to respond to the scene after Rodriguez swallowed the sandwich bag of what appeared to be crack cocaine. Respondent denied that he had punched Rodriguez. Respondent asserted that he only used his open hands to attempt to subdue Rodriguez.

The transcript of the CCRB interview of Respondent's partner Person B (Resp. Ex. B); the medical records regarding the examination and treatment Rodriguez received at [REDACTED] [REDACTED] Hospital's Emergency Room (CCRB Ex. 2); the medical records regarding the examination and treatment Respondent received at [REDACTED] Hospital's Radiology

Department (CCRB Ex. 6); and the Mugshot arrest photo of Rodriguez that was placed in evidence (CCRB Ex. 4); all will be discussed in the Analysis section.

Analysis

It is charged that Respondent wrongfully used force by punching Rodriguez in the face without police necessity.

Rodriguez testified at this trial that Respondent punched him in the face with a closed fist. Respondent denied that he had punched Rodriguez. (Tr. p. 115). Thus, this case presents the straight forward question of whose version of this event is more credible. In such a case, it is critical to determine whether the record contains reliable evidence that supports one version over the other. I find that the record contains reliable evidence that supports Rodriguez' version of this event.¹

Initially, I would note that Respondent does not dispute that he suffered a swollen right hand as a result of this incident. (Tr. p. 142-143). This injury is consistent with Rodriguez' claim that Respondent used his right hand to punch him in the face with a closed fist and is inconsistent with Respondent's claim that he only used open hands to attempt to subdue Rodriguez. (Tr. p. 142). Rodriguez' claim that Respondent punched him in the face with a closed fist is also supported by the medical records regarding the examination and treatment Respondent received at [REDACTED] Hospital's Radiology Department which state that Respondent had "pain in right hand" and a "likely contusion" as a result of "punching." (CCRB Ex. 6). The doctor who examined Respondent wrote that he was suffering "joint pain after punching." Since this information came from Respondent, this medical record constitutes evidence that Respondent stated that his right hand was injured as a result of punching.

¹ Notwithstanding his criminal record (Resp. Ex. A)

Rodriguez' claim that Respondent punched him in the face with a closed fist and that he was punched on "my tooth and on my mouth," is also supported by the medical records regarding the examination and treatment Rodriguez' received in [REDACTED] Hospital's Emergency Room which show that Respondent had a "contusion to head," "superficial abrasions" and a "chipped tooth." (CCRB Ex. 2 p. 1) Finally, the Mugshot arrest photo of Rodriguez (CCRB Ex. 4) shows an abrasion on his forehead above his left eye that is consistent with a punch.

Respondent and Rodriguez also offered completely different testimony regarding whether Rodriguez had swallowed a sandwich bag containing crack cocaine. Rodriguez denied that he possessed or swallowed a sandwich bag containing crack cocaine or anything else. Respondent testified that he saw Rodriguez pull out of his pocket and then swallow "a sandwich bag filled with alleged crack cocaine." (Tr. p. 131-133). Respondent's claim is supported by the hearsay statement of his now-retired partner Person B. During his interview at CCRB, Person B stated that Rodriguez had "reached his hand into his pocket and pulled out numerous amounts of alleged crack from the same pocket that we observed him selling from, put it into his mouth. (and) swallowed it." (Resp. Ex. B p. 11-12)

However, the believability of Respondent's testimonial claim and Person B's hearsay claim that they saw Rodriguez swallow cocaine must be seriously questioned in light of the fact that their claim is inconsistent with their failure to insure compliance with the Patrol Guide Procedure that applies in such a situation.

Patrol Guide Procedure No. 208-02 mandates that:
When a uniformed member of the service observes or suspects that a prisoner has ingested a narcotic or other dangerous substance, the prisoner will be transported from the place of arrest DIRECTLY to the nearest hospital facility. The uniformed member of the service WILL PROMPTLY notify the communications section dispatcher and the

patrol supervisor upon determination of possible ingestion, when transport to hospital is initiated, and upon arrival at the hospital. Emergency Medical Service (EMS) and hospital personnel will be informed of the quantity and type of substance ingested, if known. UNDER NO CIRCUMSTANCES will a prisoner who has ingested a narcotic or other dangerous substance be transported to the command for arrest processing prior to receiving medical treatment.

Respondent asserted that he intended to take Rodriguez to the hospital and he offered unsupported testimony that he told a supervisor at the scene that Rodriguez had swallowed a bag containing cocaine and needed to be transported to a hospital. However, he acknowledged that even though he put out an officer-in-distress call and even though he radioed for backup to respond to the scene, neither he nor Person B radioed for EMS or an ambulance to respond to the scene (Tr. p. 134-135). During his interview at CCRB, Person B made no claim that he or Respondent had made any attempt to obtain medical assistance for Rodriguez after they observed him swallow a bag containing suspected cocaine. Person B admitted that after he and Respondent had handcuffed Rodriguez, they merely placed him "in the back of an RMP and he was taken back to the stationhouse and my partner was taken to the hospital." (Resp. Ex. B p. 16-17)

As a result of Respondent's and Person B's failure to insure that this important Patrol Guide Procedure was complied with by personally arranging for Rodriguez to be taken directly to a hospital and not transported to the stationhouse, as he was, their claim that they saw Rodriguez swallow cocaine lacks credibility, and, if this claim is not believable, their claim that Respondent did not punch Rodriguez is similarly not believable.²

Based on the above analysis, Respondent is found guilty as charged.

² As a result of these findings, I need not consider the statements of Person A which were offered as hearsay at this trial (CCRB Ex. 1), or the video that Person A recorded inside the 52 Precinct stationhouse (CCRB Ex. 3).

PENALTY RECOMMENDATION

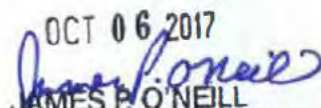
In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 9, 2013. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum.

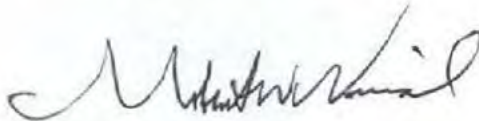
The CCRB Administrative Prosecutor recommended that Respondent forfeit 15 vacation days as a penalty. A 15 vacation day penalty is consistent with what other officers have forfeited in cases where officers have been found guilty of striking arrestees without police necessity. In *Case No. 20114-12476* (Feb. 16, 2016), a four-year police officer who had no prior disciplinary record forfeited 15 vacation days as a penalty after he was found guilty of wrongfully striking an arrestee on his head causing injury. In *Case No. 2015 14073* (Dec. 19, 2016), a five-year officer with no prior disciplinary record forfeited 15 vacation days for wrongfully using force without police necessity by punching an arrestee in the face. Most recently, in *Case No. 2015-14319* (March 28, 2017), a six-year police officer who had no prior disciplinary history forfeited 15 vacation days as a penalty for punching an arrestee in the face without police necessity.

Therefore, it is recommended that Respondent forfeit 15 vacation days as a penalty.

Respectfully submitted,

APPROVED

OCT 06 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



Robert W. Vinal
Assistant Deputy Commissioner - Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JORGE MONGE
TAX REGISTRY NO. 955212
DISCIPLINARY CASE NO. 2016-15603

Respondent received an overall rating of 4.0 on his 2016 annual evaluation, 4.0 on his 2015 evaluation, and 3.5 on his 22-month probationary evaluation. He has no medals. [REDACTED]

[REDACTED] He has no monitoring records. He has no formal disciplinary record.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials